IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4667 OF 2004

Afzal @ Papa Usman Lala Pathan .. Applicant.

V/s.

The State of Maharashtra .. Respondent.

Shri A.R. Khan i/by P. Hingorani for the Applicant.
Shri D.R.More, APP for Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 07, 2004

PC :-

. Heard counsel for the parties.

2. It is the prosecution case that 250 grams of Heroin was seized from the Applicant and another 250 gms of Heroin came to be seized at the instance of the Applicant from the premises, which were allegedly occupied by his father. In all 500 gms of heroin has been seized at the instance of the Applicant. Counsel for the Applicant, however, argues that recovery during seizure is made at two different places and in so far as, the second seizure is concerned, that will have to be discarded in view of the reasons recorded by the Special Court below in the Application

preferred by the father of the Applicant dated 6th March, 2004. If it is so, then it will necessarily follow that seizure of 250 gms of heroin has been made from the applicant, which will have to be assumed to be not a commercial quantity, as it does not exceed 250 gms. The argument though seems to be attractive, does not commend to me. In the first place, the reasons which weighed with the lower court for enlarging the applicant's father on bail will be of no avail to the applicant; inasmuch as it is to be seen that 250 gms of heroin has been seized from the applicant and further 250 gms of heroin has been seized at his instance from the premises allegedly occupied by his father. Viewed in this perspective, the total seizure is 500 gms of heroin and not 250 gms as contended. In the circumstances, the argument canvassed on behalf of the Applicant that the seizure is of less than a commercial quantity is ill advised. So understood, it necessarily follows that rigorous of section 37 of the Act will apply to the case at hand; and it will not be open for this court to enlarge the applicant on bail unless the conditions specified in section 37 of the Act are fulfilled. In the present case, there is material on record to indicate that the seizure of contraband items was made from the

Applicant and at the instance of the Applicant. In that case, it is not possible to record a finding that there is reason to belive that the applicant is not guilty of alleged offence. This is not a case for bail. Hence, dismissed.

3. The trial court is, however, directed to expedite the hearing of the case and preferrably finally dispose of the same in one year from today. Needless to observe, that the trial court will decide the matter on its own merits, uninfluenced by any of the observations made in this order.

4. Ordered accordingly.

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